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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

DIVERSIFIED CONCRETE CUTTING, INC., a
Nevada corporation,

Case No. 3:10-cv-00526-RCJ-WGC

Plaintiff,

vs.

**STIPULATED PROTECTIVE
ORDER AND
CONFIDENTIALITY
AGREEMENT**

TRUSTEES of the NORTHERN NEVADA
OPERATING ENGINEERS HEALTH &
WELFARE TRUST FUND, JOHN MADOLE and
RUSSELL BURNS; TRUSTEES of the
OPERATING ENGINEERS AND
PARTICIPATING EMPLOYERS
PREAPPRENTICE, APPRENTICE, AND
JOURNEYMAN AFFIRMATIVE ACTION
TRAINING FUND FOR NORTHERN NEVADA,
JOHN MADOLE and RUSSELL BURNS; THE
NEVADA CONSTRUCTION INDUSTRY
PROMOTION BUREAU, INC., a Nevada non-
profit corporation; THE NORTHERN NEVADA
OPERATING ENGINEERS CONTRACT
COMPLIANCE FUND, INC., a Nevada non-profit
corporation; TRUSTEES of the OPERATING
ENGINEERS PENSION TRUST FUND, GIL
CROSTHWAITE and RUSSELL BURNS;
TRUSTEES of the OPERATING ENGINEERS
VACATION AND HOLIDAY PAY PLAN, GIL
CROSTHWAITE and RUSSELL BURNS;
TRUSTEES of the OPERATING ENGINEERS
PENSIONED OPERATING ENGINEERS
HEALTH & WELFARE TRUST FUND, GIL
CROSTHWAITE and RUSSELL BURNS; AND
DOE DEFENDANTS I through X, inclusive,

Defendants.

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1 **WHEREAS**, this matter involves documents and information related to the parties, which
2 documents and information contain non-public, tax, business, commercial, financial, proprietary
3 and/or other sensitive information, which, if not kept confidential, could be injurious to the interests
4 of the parties; and

5 **WHEREAS**, this Stipulated Protective Order and Confidentiality Agreement (this
6 “Stipulated Protective Order and Confidentiality Agreement”) has been agreed to by all the Parties
7 and their counsel, and submitted to the Court, so as to ensure the confidentiality of the
8 aforementioned documents and information;

9 **IT IS HEREBY STIPULATED** by and between the Parties, through their respective
10 counsel of record, that the following procedures shall apply to all information, materials, or things
11 designated as “Confidential” in the above-captioned matter (“Discovery”):

12 1. The parties to this Stipulated Protective Order and Confidentiality Agreement include
13 the Plaintiff and each named Defendant. This Stipulated Protective Order and Confidentiality
14 Agreement is effective and binding prospectively upon entry by the Court.

15 2. Each Party and any third party upon whom a discovery request is served after the date
16 of this stipulation (each, a “Designating Party”) may designate as “Confidential” any Discovery that
17 it produces in the above-referenced matter, as well as any Discovery that contains its own proprietary
18 or privileged information produced by any other Party, including documents, materials, things, or
19 testimony. In doing so, such Designating Party represents that it has a good faith belief that the
20 material designated as “Confidential” contains non-public, tax, business, commercial, financial,
21 proprietary and/or other sensitive information, trade secrets, information subject to a legally
22 protected right of privacy, or other confidential information. Documents shall be designated as
23 “Confidential” by affixing to them a stamp bearing the word “Confidential.” A “Confidential”
24 designation may also be affixed to any document generated in the course of this litigation, including
25 portions of briefs, memoranda, or any other writings filed with the Court, which mentions, discusses,
26 or comments upon any confidential information. All copies of documents that have been designated
27 as “Confidential” shall be treated in the same manner as the documents that were originally
28 designated as “Confidential.”

1 3. Any and all documents, materials, things, or testimony that were previously provided
2 by any Party under a request of confidentiality, and that were subsequently produced or will be
3 produced in this matter, whether in hard copy or electronic form, are hereby retroactively designated
4 “Confidential,” and are subject to the terms of this order.

5 4. Discovery designated as “Confidential” under this Stipulated Protective Order and
6 Confidentiality Agreement, the information contained therein, and any summaries, copies, abstracts,
7 or other documents derived in whole or in part from material designated as “Confidential” shall be
8 used only for the purposes of the prosecution, defense, or resolution of this action, including
9 appellate proceedings in this action, and for no other purpose. Except as stated in the prior sentence,
10 confidential material may not be used for any other purpose, including without limitation, any other
11 litigation or business, governmental, or regulatory purpose or function, except as may be subpoenaed
12 by any court, administrative, or legislative body.

13 5. In the case of deposition testimony, the Parties and any non-party may designate as
14 “Confidential” their respective testimony and testimony by any of their respective current or former
15 partners, directors, principals, personnel or employees at the time of the deposition or by written
16 notice to all counsel of record within fourteen (14) business days after receipt of the written
17 transcript.

18 6. “Disclosure” and “disclosed” as used in this Stipulated Protective Order and
19 Confidentiality Agreement and the attached Exhibit A shall include, without limitation, allowing or
20 failing to take reasonable steps to prevent: (a) visual inspection of a designated document (or any
21 summary, description, abstract, or index thereof), by any individual not authorized under this
22 Stipulated Protective Order and Confidentiality Agreement; and/or (b) any communication that
23 reveals, conveys, or otherwise discloses the substance of all or any part of a designated document
24 (or any summary, description, abstract, or index thereof) to an individual not authorized under this
25 Stipulated Protective Order and Confidentiality Agreement.

26 7. Except with the prior written consent of the Designating Party, no documents (either
27 original or copy) designated as “Confidential” and no information contained therein, including any
28 summaries made of such information, may be disclosed to any person other than:

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- (a) The named Parties, their present counsel representing the named Parties, and any support staff assisting counsel in this litigation;
- (b) The Court and any persons employed by the Court whose duties require access to such materials;
- (c) Any insurer or indemnifier of any Party, or their counsel;
- (d) Any expert or consultant retained by counsel or a Party to assist in the preparation of this case, or to testify at trial or any other proceedings in this action;
- (e) Any person not already identified in paragraphs (a) through (d) above testifying at a deposition, and their counsel, if represented;
- (f) Any person who authored the material or previously received that information in the ordinary course of business;
- (g) Court reporters and other persons involved in recording deposition testimony in this action by any means;
- (h) Governmental entities, only under compulsion of subpoena; and
- (i) Such other persons as are designated by written agreement between the Parties and the producing Party, or by Court order.

8. Counsel desiring to reveal "Confidential" material produced by another Party to any of the persons referred to in paragraphs 7(a), (c), (d), (e), (f), (g) and (i) above shall advise each person of the existence of this Stipulated Protective Order and Confidentiality Agreement and secure from each person, prior to disclosure of any information subject to this Stipulated Protective Order and Confidentiality Agreement, an executed Non-Disclosure Certificate stating that the person has read this Stipulated Protective Order and Confidentiality Agreement, understands its provisions, agrees to be bound thereby, and agrees to be subject to the jurisdiction of this Court for any proceedings relative to enforcement of this Stipulated Protective Order and Confidentiality Agreement. The certificate shall be in the form attached hereto as Exhibit A. Counsel for the Parties, and their support staff, shall not be required to execute Non-Disclosure Certificates. Counsel shall maintain a complete record of every original signed certificate obtained from any person

1 pursuant to this paragraph. The signed certificates shall be produced upon demand.

2 9. If any Party or non-party inadvertently produces any “Confidential” information or
3 material without marking it with the appropriate legend, such inadvertent production shall not by
4 itself be a waiver of a claim of confidentiality as to that material, and the Party or non-party may give
5 written notice to the receiving Party and other parties that the document, thing or related testimony
6 or response is deemed “Confidential” and should be treated as such in accordance with the
7 provisions of this Stipulation and Order. After such notice, the material shall be subject to the
8 protections of this Stipulation and Order. If a recipient of material deemed “Confidential” under the
9 terms of this Order inadvertently discloses Confidential material to persons not listed in paragraph
10 4, such disclosure shall be reported in writing to the Designating Party within thirty (30) days of the
11 producing Party’s discovery of such inadvertent disclosure. In that event, the person or entity who
12 inadvertently disclosed the Confidential material shall make all reasonable efforts to retrieve the
13 Confidential material and any documents containing such Confidential material, and to obtain the
14 agreement of persons to whom inadvertent disclosure was made to treat the Confidential material
15 in accordance with the terms of this Stipulation and Order.

16 10. Nothing herein shall be deemed to waive any applicable privilege or work product
17 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
18 protected by privilege or work product protection, or the inadvertent production of Confidential
19 information without the appropriate designation. The inadvertent production of documents or
20 information subject to the attorney-client privilege or work-product immunity, or the inadvertent
21 production of Confidential information without the proper designation, shall not waive the privilege,
22 immunity, or protection of the Confidential information if a request for return of such document or
23 information is made within thirty (30) days after the producing party learns of its inadvertent
24 production. With regard to inadvertently produced material subject to a privilege or the work
25 product protection, upon request, the document or information shall be returned to the producing
26 party, or expunged, and all copies of, summaries of, or work product deriving from the document
27 or information shall be destroyed immediately. With regard to Confidential information
28 inadvertently produced without the appropriate designation, upon request, the document or

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1 information shall be returned to the producing party for proper labeling, and all copies of, summaries
2 of, or work product deriving from the document or information shall be labeled as containing
3 Confidential information subject to this Order.

4 11. Should any other non-party seek access to Confidential information by subpoena,
5 request or otherwise, the recipient of the Confidential information, as applicable, shall give prompt
6 written notice to the Designating Party of such subpoena or request; shall object to the production
7 of such Confidential information; and shall cooperate with the Designating Party in resisting any
8 efforts by third parties to obtain Confidential information. Unless within twenty (20) days of service
9 of such notification the Designating Party applies for an order from a court of competent jurisdiction
10 precluding the receiving Party from complying with such subpoena or request, the receiving Party
11 shall be free to produce the Confidential material. If the Designating Party applies for such an order,
12 the receiving Party shall not produce the documents designated "Confidential" until after the Court
13 rules on such application. Nothing herein shall be construed as requiring the receiving Party or
14 anyone else covered by this Stipulation and Order to challenge or appeal any order requiring
15 production of Confidential material covered by this Stipulation and Order, or subject herself, himself
16 or itself to any penalties for non-compliance with any legal process or order, or seek any relief from
17 this Court.

18 12. When documents or information designated "Confidential" is used at depositions,
19 hearings, or other public or quasi-public proceedings, the documents or information shall be
20 identified as Confidential in accordance with the applicable provisions of paragraphs 4 and 8, in
21 terms sufficient to apprise those present of their protected status and of the protective conditions
22 which apply to them. To the extent that any of those present are not designated persons as defined
23 in paragraph 7, or are designated persons who have not previously been shown this Stipulated
24 Protective Order and Confidentiality Agreement, the applicable provisions of this Stipulated
25 Protective Order and Confidentiality Agreement shall be carried out.

26 13. In the event that a Party wishes to use or refer to any documents designated
27 "Confidential," or excerpts or portions therefrom, in any affidavits, briefs, memoranda of law, or
28 other papers filed in Court in this litigation, such affidavits, briefs, memoranda of law, or other

1 papers shall be filed under seal with the Court in the manner provided by the applicable rules and
2 consistent with paragraph 20 herein.

3 14. The Parties and a Designating Party may agree in writing or on the record, without
4 further order of this Court, to allow disclosure of documents or information to an individual who
5 otherwise would not be authorized to receive such documents or information hereunder. In the
6 absence of an agreement in writing or on the record, counsel of record for any Party (the “Notifying
7 Party”) may at any time serve a written notice upon all other counsel of record and a Designating
8 Party (a) objecting to the designation made by the Designating Party, (b) proposing to disclose
9 designated Discovery to an individual to whom such disclosure is not authorized by this Stipulated
10 Protective Order and Confidentiality Agreement, or (c) proposing to designate as Confidential any
11 such Discovery which the Notifying Party failed to so label. The Parties and the Designating Party
12 shall attempt to resolve any dispute concerning (a), (b), or (c) in good faith. If the attempt is
13 unsuccessful, the Notifying Party may move for an order changing the designation of the documents
14 or information. If any such dispute is submitted to the Court, the documents or information referred
15 to in such further notice will retain their initial designation until a ruling by the Court, and thereafter
16 shall be classified in accordance with such ruling.

17 15. Unless otherwise agreed in writing, within ninety (90) days of the conclusion of this
18 action and the related proceedings described in paragraph 4, including any appeal, all documents
19 designated “Confidential” and all copies of same (other than exhibits filed with the court and/or
20 copies of briefs and other papers filed with the Court), shall be returned to the Designating Party by
21 each Party at that Party’s expense or otherwise destroyed. Any such briefs and other papers retained
22 by a Party shall continue to be treated pursuant to the terms of this Order.

23 16. This Stipulated Protective Order and Confidentiality Agreement shall not affect any
24 Party’s right to object on any ground to the use of Discovery in litigation. This Stipulated Protective
25 Order and Confidentiality Agreement shall not affect any Party’s right to use its own documents or
26 other documents lawfully obtained from a third party in any manner permitted by law in this
27 litigation. Consent to and entry of this Stipulated Protective Order and Confidentiality Agreement
28 shall not restrict the right of any Party to move for an order seeking modification of this Stipulated

1 Protective Order and Confidentiality Agreement or further protection.

2 17. Due to the nature of the litigation, many discoverable documents contain social
3 security numbers of employees of Plaintiff. It is agreed that the social security numbers shall be
4 treated as “confidential” even though a document containing a social security number may not be
5 stamped “confidential.”

6 18. The Court shall determine at the time of trial how Confidential material shall be
7 handled at trial, consistent with the purposes of this Stipulated Protective Order and Confidentiality
8 Agreement. This Stipulated Protective Order and Confidentiality Agreement shall not prejudice or
9 affect any Party’s right to object to the authenticity or admissibility of any evidence at trial.

10 19. This Stipulation and Order shall remain in force and effect during the entirety of this
11 litigation and thereafter (including after the return or destruction of the Discovery), until modified
12 in a writing signed by each Party, superseded or terminated on the record by the agreement of the
13 Parties hereto, or by Order of the Court.

14 20. Unless otherwise permitted by statute, rule or prior court order, papers filed with the
15 court under seal shall be accompanied by a contemporaneous motion for leave to file those
16 documents under seal, and shall be filed consistent with the court’s electronic filing procedures in
17 accordance with Local Rule 10-5(b). Notwithstanding any agreement among the parties, the party
18 seeking to file a paper under seal bears the burden of overcoming the presumption in favor of public
19 access to papers filed in court. *Kamakana v. City and County of Honolulu*, 447 F.2d 1172 (9th Cir.
20 2006).

21 DATED this _____ day of March, 2012.

22 JENKINS & CARTER
23 Attorneys for Defendants

24 By: /s/ Jerry C. Carter
25 NATHAN M. JENKINS
26 JERRY C. CARTER
27 501 Hammill Lane
28 Reno, Nevada 89511-1004

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1 DATED this 29th day of March, 2012.

2 LAW OFFICES OF MICHAEL B. SPRINGER, PC
3 Attorneys for Plaintiff

4 By: /s/ John D. Moore
5 MICHAEL B. SPRINGER (NV Bar 1948)
6 JOHN D. MOORE (NV Bar 8581)
7 9628 Prototype Court
8 Reno, NV 89521

9
10 **ORDER**

11 IT IS SO ORDERED.

12 DATED this 2nd day of March, 2012.

13
14 
15 UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A**ACKNOWLEDGMENT**

I acknowledge that I have read the attached Protective Order entered by the United States District Court for the District of Nevada, and I understand that I am authorized to receive Confidential Information subject to that Protective Order. I agree to abide by the obligations and conditions of that Protective Order. I agree to submit to the jurisdiction of the United States District Court for the District of Nevada for all disputes arising out of or relating to the Protective Order and/or the disclosure or receipt of Confidential Information under that Protective Order.

Dated this _____ day of _____, 20____.

Signature: _____

Printed Name: _____

Company: _____

Title/Position: _____

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